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**DEPARTMENT OF COMMERCE**

**National Oceanic and Atmospheric Administration**

**50 CFR Part 300**

**[Docket No. 190220141-9141-01]**

**RIN 0648-BI78**

**International Fisheries; Western and Central Pacific Fisheries for Highly Migratory Species; Fishing Restrictions in Purse Seine Fisheries**

**AGENCY:** National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

**ACTION:** Interim final rule; request for comments.

**SUMMARY:** This interim final rule establishes limits on fishing effort by U.S. purse seine vessels in the U.S. exclusive economic zone (EEZ) and on the high seas between the latitudes of 20° N. and 20° S. in the area of application of the Convention on the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Convention). The calendar year limit for 2019 is 1,616 fishing days. The calendar year limit for 2020 and subsequent years is 1,828 fishing days. This action is necessary for the United States to implement provisions of a conservation and management measure adopted by the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (WCPFC or Commission) and to satisfy the obligations of the United States under the Convention, to which it is a Contracting Party. NMFS is seeking comments on this interim final rule and will respond to those comments in a subsequent final rule.

**DATES:** Effective on *[Insert date of publication in the FEDERAL REGISTER]*.

Comments must be submitted in writing by *[Insert date 30 days after date of publication in the FEDERAL REGISTER]*.

**ADDRESSES:** You may submit comments on this document, identified by NOAA-NMFS-2019-0056, and the regulatory impact review (RIR) prepared for the interim final rule, by either of the following methods:

- *Electronic submission:* Submit all electronic public comments via the Federal e-Rulemaking Portal.

1. Go to *www.regulations.gov#!/docketDetail;D=NOAA-NMFS-2019-0056*,
2. Click the “Comment Now!” icon, complete the required fields, and
3. Enter or attach your comments.

- OR -

- *Mail:* Submit written comments to Michael D. Tosatto, Regional Administrator, NMFS, Pacific Islands Regional Office (PIRO), 1845 Wasp Blvd., Building 176, Honolulu, HI 96818.

*Instructions:* Comments sent by any other method, to any other address or individual, or received after the end of the comment period, might not be considered by NMFS. All comments received are a part of the public record and will generally be posted for public viewing on *www.regulations.gov* without change. All personal identifying information (e.g., name and address), confidential business information, or otherwise sensitive information submitted voluntarily by the sender will be publicly accessible. NMFS will accept anonymous comments (enter “N/A” in the required fields if you wish to remain anonymous).

Copies of the RIR, the programmatic environmental assessment (PEA), and supplemental environmental assessment (SEA) prepared for National Environmental Policy Act (NEPA) purposes are available at [www.regulations.gov](http://www.regulations.gov) or may be obtained from Michael D. Tosatto, Regional Administrator, NMFS PIRO (see address above).

**FOR FURTHER INFORMATION CONTACT:** Rini Ghosh, NMFS PIRO,  
808-725-5033.

**SUPPLEMENTARY INFORMATION:**

**Background on the Convention**

The Convention is concerned with the conservation and management of highly migratory species (HMS) and the management of fisheries for HMS. The objective of the Convention is to ensure, through effective management, the long-term conservation and sustainable use of HMS in the western and central Pacific Ocean (WCPO). To accomplish this objective, the Convention established the Commission for the Conservation and Management of Highly Migratory Fish Stocks in the Western and Central Pacific Ocean (Commission or WCPFC), which includes Members, Cooperating Non-members, and Participating Territories (collectively referred to here as “members”). The United States of America is a Member. American Samoa, Guam, and the Commonwealth of the Northern Mariana Islands are Participating Territories.

As a Contracting Party to the Convention and a Member of the Commission, the United States implements, as appropriate, conservation and management measures adopted by the Commission and other decisions of the Commission. The WCPFC Implementation Act (16 U.S.C. 6901 *et seq.*), authorizes the Secretary of Commerce, in consultation with the Secretary of State and the Secretary of the Department in which the

United States Coast Guard is operating (currently the Department of Homeland Security), to promulgate such regulations as may be necessary to carry out the obligations of the United States under the Convention, including the decisions of the Commission. The WCPFC Implementation Act further provides that the Secretary of Commerce shall ensure consistency, to the extent practicable, of fishery management programs administered under the WCPFC Implementation Act and the Magnuson-Stevens Fishery Conservation and Management Act (MSA; 16 U.S.C. 1801 *et seq.*), as well as other specific laws (see 16 U.S.C. 6905(b)). The Secretary of Commerce has delegated the authority to promulgate regulations under the WCPFC Implementation Act to NMFS. A map showing the boundaries of the area of application of the Convention (Convention Area), which comprises the majority of the WCPO, can be found on the WCPFC website at: [www.wcpfc.int/doc/convention-area-map](http://www.wcpfc.int/doc/convention-area-map).

### **WCPFC Decision on Tropical Tunas**

At its Fifteenth Regular Session, in December 2018, the WCPFC adopted Conservation and Management Measure (CMM) 2018-01, “Conservation and Management Measure for Bigeye, Yellowfin and Skipjack Tuna in the Western and Central Pacific Ocean.” CMM 2018-01 is the most recent in a series of CMMs for the management of tropical tuna stocks under the purview of the Commission. It is a successor to CMM 2017-01, adopted in December 2017. These and other CMMs are available at: [www.wcpfc.int/conservation-and-management-measures](http://www.wcpfc.int/conservation-and-management-measures). CMM 2018-01 is similar in many respects to its predecessor WCPFC conservation and management measures for tropical tunas, and NMFS has already implemented most provisions of CMM 2018-01 through prior rulemaking.

The purpose of CMM 2018-01 is to ensure the sustainability of the stocks of bigeye tuna (*Thunnus obesus*), yellowfin tuna (*Thunnus albacares*), and skipjack tuna (*Katsuwonus pelamis*) in the WCPO until the establishment of specific harvest strategies for those stocks. CMM 2018-01 went into effect on February 13, 2019, and remains in effect until February 10, 2021.

The provisions of CMM 2018-01 implemented in this interim final rule are the limits on fishing effort by U.S. purse seine vessels in the U.S. EEZ and on the high seas between the latitudes of 20° N. and 20° S. in the Convention Area. CMM 2018-01 specifies a limit of 558 fishing days in the U.S. EEZ and a limit of 1,270 fishing days on the high seas for each of the calendar years 2019 and 2020 for U.S. purse seine vessels.

CMM 2018-01 also includes new provisions for fish aggregating device (FAD) management for purse seine vessels. These new provisions are: (1) specific FAD design requirements to reduce the risk of entanglement of sharks, sea turtles and other species; and (2) language to clarify that sets on small amounts of plastic or small garbage that do not have a tracking buoy attached are not considered to be FAD sets during the prohibition periods in 2019 for setting on FADs.

Regarding the specific FAD design requirements: The FAD design requirements do not need to go into effect until January 1, 2020, as specified in CMM 2018-01. They are not being implemented through this interim final rule; they may be implemented, as appropriate, in a separate rulemaking.

Regarding the language to clarify the nature of FAD sets: In 2018, NMFS implemented the provisions regarding the prohibition periods for setting on FADs set forth in CMM 2017-01, which are identical to the provisions set forth in CMM 2018-01.

Under existing regulations, U.S. purse seine vessels are prohibited from setting on FADs in each calendar year from July 1 through September 30 in the area between 20° N latitude and 20° S latitude in the Convention Area, and for an additional two months on the high seas in that area (November and December). See 50 CFR 300.223(b). CMM 2018-01 included new language clarifying that sets on small amounts of plastic or garbage that do not have a tracking buoy are not considered to be FAD sets during the prohibition periods. The current definition of FAD at 50 CFR 300.211 states that FAD means “any artificial or natural floating object, whether anchored or not and whether situated at the water surface or not, that is capable of aggregating fish, as well as any object used for that purpose that is situated on board a vessel or otherwise out of the water,” excluding a vessel. NMFS has not in the past, and continues not to, interpret the current regulatory FAD definition to include “sets on small amounts of plastic or garbage that do not have a tracking buoy” during prohibition periods. Because the CMM’s language is consistent with NMFS’ interpretation of the existing regulatory definition, NMFS is not revising the existing FAD definition found at 50 CFR 300.211.

### **The Action**

CMM 2018-01 includes purse seine fishing effort limits for calendar year 2019 and calendar year 2020. Because the Commission will likely continue to adopt similar management measures for future years, and to ensure that the conservation measures do not lapse, NMFS is implementing the limits in this interim final rule to remain effective until they are replaced or amended.

Under CMM 2018-01, the specified U.S. purse seine fishing effort limit for the U.S. EEZ is 558 fishing days per year and the specified limit for the high seas is 1,270

fishing days per year. CMM 2017-01 and CMM 2018-01 both include language that requires any overage of an annual limit to be deducted from the limit for the following year. The separate limits for 2018 were 1,370 fishing days for the high seas and 458 fishing days for the U.S. EEZ. As a result of the purse seine fishing effort limit for the high seas being reached, NMFS closed the high seas in the Convention Area to U.S. purse seine fishing on September 18, through the end of the calendar year (see 83 FR 45849; published September 11, 2018). NMFS estimates that the U.S. WCPO purse fleet fished for a total of 1,582 days on the high seas, which is 212 fishing days over the 2018 limit for the high seas.

In the past, NMFS has implemented the U.S. purse seine fishing effort limits on the high seas and in the U.S. EEZ as a single combined limit, rather than establishing separate limits for the two areas. For 2018 only, NMFS established separate limits for the U.S. EEZ and the high seas. This was done in response to a provision in CMM 2017-01 (not included in previous CMMs or CMM 2018-01) providing for the transfer of a limited number of the United States' EEZ fishing days to the high seas.

Because under CMM 2018-01 the United States is no longer limited by the transfer provision that was included in CMM 2017-01, NMFS is combining the purse seine fishing effort limits for the U.S. EEZ and the high seas, consistent with previous rulemakings. For 2019, this interim final rule establishes a limit of 1,616 fishing days (558 fishing days from the U.S. EEZ limit plus 1,270 days from the high seas limit less the 212 fishing day overage of the 2018 high seas limit) for the Effort Limit Area for Purse Seine (or ELAPS), which comprises the areas of the high seas and U.S. EEZ between 20° N. latitude and 20° S. latitude in the Convention Area. For 2020 and

subsequent years, this interim final rule establishes a combined limit of 1,828 fishing days per calendar year for the ELAPS, which could be modified to take into consideration any overage of a previous year's limit.

Combining the high seas and EEZ limits is consistent with the objectives of CMM 2018-01. The Commission's limits on purse seine fishing effort are designed, in combination with other measures, to control fishing mortality on the tropical tuna stocks. The CMM has identified separate limits for EEZs and the high seas not for any stated conservation purpose, but rather to ensure effective implementation. The Commission decided that management of fishing effort in zones should be the responsibility of coastal members, and management of fishing effort on the high seas should be the responsibility of flag members. Accordingly, where as in the case of the United States, the member is both a flag state and a coastal state, combining the EEZ and high seas limits meets the conservation objectives of the CMM provided that the sum of the two limits is not exceeded.

NMFS considered both the action alternative that would combine the two areas and another alternative that would not (see the PEA and the RIR for comparisons of the two alternatives). Because both alternatives would accomplish the objective of controlling fishing effort by the WPCFC-adopted amount (*i.e.*, by U.S. purse seine vessels operating on the high seas and by purse seine vessels in areas under U.S. jurisdiction, collectively), and because the alternative of combining the two areas is expected to result in greater operational flexibility to affected purse seine vessels and lesser adverse economic impacts, NMFS is implementing the alternative that would combine the two areas.



The meaning of “fishing day” is defined at 50 CFR 300.211; that is, any day in which a fishing vessel of the United States equipped with purse seine gear searches for fish, deploys a FAD, services a FAD, or sets a purse seine, with the exception of setting a purse seine solely for the purpose of testing or cleaning the gear and resulting in no catch. NMFS notes the U.S. purse seine industry provided two comment letters in response to a notice issued by NOAA regarding streamlining regulatory processes and reducing regulatory burden (see 82 FR 31576; published July 7, 2017), requesting that the definition of fishing day be changed to the definition used by the Parties to the Nauru Agreement in the *Palau Arrangement for the Management of the Western Pacific Fishery Management Scheme (Purse Seine Vessel Day Scheme) as amended by the Parties to the Palau Arrangement* (Arrangement).<sup>1</sup> NMFS continues to believe the existing definition at 50 CFR 300.211 is appropriate.

NMFS will monitor the number of fishing days spent in the ELAPS using data submitted in logbooks and other available information. If and when NMFS determines that the limit of 1,616 fishing days is expected to be reached by a specific future date in 2019, or the limit of 1,828 is expected to be reached by a specific future date in 2020 or subsequent years, it will publish a notice in the *Federal Register* announcing that the purse seine fishery in the ELAPS will be closed starting on a specific future date and will remain closed until the end of calendar year. NMFS will publish that notice at least seven days in advance of the closure date.

As stated in existing regulations at 50 CFR 300.223(a)(4), starting on the announced closure date, and for the remainder of calendar year, it will be prohibited for

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<sup>1</sup> See text of the Arrangement at <https://www.pnatuna.com/content/purse-seine-vds-text>.

U.S. purse seine vessels to fish in the ELAPS, except that such vessels are not prohibited from bunkering during the closure.

### **Classification**

The Administrator, Pacific Islands Region, NMFS, has determined that this interim final rule is consistent with the WCPFC Implementation Act and other applicable laws.

### *Administrative Procedure Act*

There is good cause under 5 U.S.C. 553(b)(B) to waive prior notice and the opportunity for public comment on this action, because prior notice and the opportunity for public comment would be contrary to the public interest. This rule establishes limits on purse seine fishing effort for 2019 and future years that are similar to the limits in place from 2009 through 2018. Affected entities have been subject to fishing effort limits in the affected area—the ELAPS—since 2009, and are expecting imminent publication of the 2019 fishing effort limits. It is critical that NMFS publish the limit for 2019 as soon as possible to ensure it is not exceeded and the United States complies with its obligations with respect to CMM 2018-01. Based on data available to date, NMFS expects that the applicable limit of 1,616 fishing days in the ELAPS could be reached in the first half of the calendar year. Delaying this rule to allow for advance notice and public comment would bring a substantial risk that more than 1,616 fishing days would be spent in the ELAPS in 2019, constituting non-compliance by the United States with respect to the purse seine fishing effort limit provisions of CMM 2018-01. Because a delay in implementing this limit for 2019 could result in the United States violating its obligations with respect to the purse seine fishing effort limit provisions of CMM

2018-01, which are important for the conservation and management of tropical tuna stocks in the WCPO, allowing advance notice and the opportunity for public comment would be contrary to the public interest. NMFS will, however, consider public comments received on this interim final rule and issue a final rule, responding to comments as appropriate. Moreover, NMFS notes that the United States government shutdown in late 2018 and early 2019 affected NMFS' ability to proceed with this rulemaking in the usual timeframe after the Commission adopted CMM 2018-01.

For the reasons articulated above, there is also good cause under 5 U.S.C. 553(d)(3) to waive the 30-day delay in effective date for this rule. As described above, NMFS must implement the purse seine fishing effort limits as soon as possible to ensure that they are not exceeded. A delay in implementing this limit for 2019 could result in the United States violating its obligations with respect to the purse seine fishing effort limit provisions of CMM 2018-01, which are important for the conservation and management of tropical tuna stocks in the WCPO.

#### *Executive Order 12866*

This interim final rule has been determined to be not significant for purposes of Executive Order 12866.

#### *Regulatory Flexibility Act*

Because prior notice and opportunity for public comment are not required for this rule by 5 U.S.C. 553, or any other law, the analytical requirements of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, are inapplicable. Therefore, no regulatory flexibility analysis was required and none has been prepared.

#### *Paperwork Reduction Act*

Although there are no new collection-of-information requirements associated with this action that are subject to the Paperwork Reduction Act, existing collection-of information requirements would apply in the Convention Area, under the following Control Number: 0648-0649, Transshipment Requirements under the WCPFC.

**List of Subjects in 50 CFR Part 300**

Administrative practice and procedure, Fish, Fisheries, Fishing, Marine resources, Reporting and recordkeeping requirements, Treaties.

Dated: July 26, 2019.

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Samuel D. Rauch III,  
Deputy Assistant Administrator for Regulatory Programs,  
National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR part 300 is amended as follows:

**PART 300—INTERNATIONAL FISHERIES REGULATIONS**

**Subpart O—Western and Central Pacific Fisheries for Highly Migratory Species**

1. The authority citation for part 300, subpart O, continues to read as follows:

**Authority:** 16 U.S.C. 6901 *et seq.*

2. In § 300.223, revise paragraphs (a)(1) through (3) to read as follows:

**§ 300.223 Purse seine fishing restrictions.**

\* \* \* \* \*

(a) \* \* \*

(1) For calendar year 2019, there is a limit of 1,616 fishing days in the ELAPS.

(2) Beginning in 2020, there is a limit of 1,828 fishing days in the ELAPS per calendar year.

(3) NMFS will determine the number of fishing days spent in the ELAPS in each calendar year using data submitted in logbooks and other available information. After NMFS determines that a limit in a calendar year is expected to be reached by a specific future date, and at least seven calendar days in advance of the closure date, NMFS will publish a document in the **Federal Register** announcing that the purse seine fishery in the area where the limit is expected to be reached will be closed starting on that specific future date and will remain closed until the end of the calendar year.

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[FR Doc. 2019-16284 Filed: 7/30/2019 8:45 am; Publication Date: 7/31/2019]